

STATE OF MICHIGAN
COURT OF APPEALS

In re application of the Detroit Edison Company for reconciliation of its power supply costs recovery plan for 2004.

In re application of the Detroit Edison Company to implement the Commission's final order concerning 2004 net stranded costs and MCL 460.10a(16) and (17).

DETROIT EDISON COMPANY,

Petitioner-Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,
ENERGY MICHIGAN, INC., CONSTELLATION
NEWENERGY, INC., ATTORNEY GENERAL,
and ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY,

Appellees.

UNPUBLISHED
December 2, 2008

No. 273961
PSC
LC Nos. 00-013808;
00-014474

Before: Wilder, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Appellant Detroit Edison Company (DECo) appeals an order entered on September 26, 2006, by appellee Michigan Public Service Commission (PSC) denying DECo recovery of certain operation and maintenance (O & M) expenses, and determining DECo's net stranded costs for 2004. We affirm.

I. Background

A. Stranded Costs

In 1996, Michigan began exploring the possibility of restructuring utilities law to enable retail customers of electric utilities to purchase electricity from alternative sources for delivery through the existing system. This experimental program, known as retail open access or retail wheeling, was offered by DECo and Consumers Energy under the direction of the PSC. The

PSC recognized that such a restructuring would result in costs to the utilities, and that the utilities should be entitled to recover those “stranded costs.”¹

The PSC attempted to implement the retail open access program; however, our Supreme Court held that the PSC exceeded its statutory authority in doing so.² Thereafter, the Legislature enacted the Customer Choice and Electricity Reliability Act (Act 141), MCL 460.10 *et seq.* Act 141 provided that previous orders issued by the PSC concerning alternative energy suppliers could be enforced by the PSC. MCL 460.10a(12) (previously MCL 460.10a(5)).

Section 10a(1) of Act 141, MCL 460.10a(1), addressed stranded costs:

No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility’s net stranded costs and implementation costs as determined by the commission.

Act 141 gave the PSC wide discretion to determine stranded costs. MCL 460.10a(17).

The PSC commenced a case to approve a methodology to determine net stranded costs, and to calculate the net stranded costs incurred by DECo and Consumers (Case No. U-12639). The PSC adopted the method for calculating stranded costs proposed by the Commission Staff:

The Staff proposed that the Commission annually compute net stranded costs on a historical basis. Stranded costs would be the difference between each year’s revenue requirement associated with fixed generation assets, generation-related regulatory assets, and capacity payments associated with [purchase power agreements] and that year’s revenues available to cover those costs. In calculating the revenue requirement, it excluded variable costs because those can be avoided when customers take service from alternative electric suppliers. In calculating revenues available to cover fixed generation costs, it included the generation component of current rates and net revenues from third-party sales. The Staff used cost of service studies from Consumers’ and Detroit Edison’s most recent rate cases, with test years of 1993 and 1994, respectively, to estimate the

¹ “Stranded costs” are costs incurred during an era of regulation that are above market prices, and costs associated with the transition to competitive markets. Stranded costs include: “(1) regulatory assets, consisting of unrecovered costs of demand-side management programs and other similar costs, (2) capital costs of nuclear plants, (3) contract capacity costs arising from power purchase agreements, (4) employee retraining costs, and (5) costs related to the implementation of restructuring.” *Consumers Energy Co v Public Service Comm*, 268 Mich App 171, 181; 707 NW2d 633 (2005), citing *In re Electric Utility Industry Restructuring*, unpublished opinion and order of the Public Service Commission, issued June 5, 1997 (Case No. U-11290), pp 6-14.

² See *Consumers Power Co v Public Service Comm*, 460 Mich 148; 596 NW2d 126 (1999).

portion of rates that covers fixed generation costs. When the revenue requirement for a specific year exceeds the revenues available to cover those costs, the utility has stranded costs for that year. For Consumers in 2000, the Staff calculated negative stranded costs (or stranded benefits) of \$97 million. For Detroit Edison in 2000, it calculated negative stranded costs (or stranded benefits) of \$320 million. The Staff recognized that there would be a delay in the recovery of stranded costs due to the historical nature of its methodology, although it did not intend for the delay to inhibit the utilities' ability to recover any costs that could be shown to be stranded. [Opinion and Order, Case No. U-12639, December 20, 2001, pp 4-5.]

The PSC rejected Consumers' argument that the end of the rate freeze would require a change in the methodology used to determine net stranded costs. *Id.* at 30. This Court affirmed the PSC's order in Case No. U-12639.³

B. Rate Freeze and DECo's Power Supply Cost Recovery Case

Act 141 reduced rates and imposed temporary caps on the rates that an electric utility such as DECo could charge its customers. MCL 460.10d provided in pertinent part:

(1) Unless otherwise reduced by the commission . . . the commission shall establish the residential rates for each utility with 1,000,000 or more retail customers in this state as of May 1, 2000 that will result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. Notwithstanding any other provision of law or commission order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on the effective date of the amendatory act that added this section and remain in effect until December 31, 2003 and all other electric retail rates of an electric utility with 1,000,000 or more retail customers authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003, unless otherwise reduced by the commission. . . .

(2) On and after December 31, 2003, rates for an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 shall not be increased until the earlier of December 31, 2013 or until the commission determines, after notice and hearing, that the utility meets the market test under [MCL 460.10f] and has completed the transmission expansion provided for in the plan required under [MCL 460.10v]. The rates for commercial or manufacturing customers of an electric utility with 1,000,000 or more retail customers with annual peak demands of less than 15 kilowatts shall not be increased before January 1, 2005. There shall be no cost shifting from customers with capped rates

³ See *Consumers Energy Co v Public Service Comm and Detroit Edison Co v Public Service Comm*, unpublished per curiam opinion of the Court of Appeals, issued November 18, 2003 (Docket Nos. 241990, 241991).

to customers without capped rates as a result of this section. In no event shall residential rates be increased before January 1, 2006 above the rates established under subsection (1).

DECo filed an application for a general rate case,⁴ as well as implementation of a power supply cost recovery (PSCR)⁵ plan and five-year forecast pursuant to MCL 460.4j(18) (Case No. U-13808). DECo sought an increase in its rates on both an interim and permanent basis, reinstatement of its PSCR clause that had been suspended when the rate freeze took effect, a determination of its stranded costs, and authorization to use excess securitization savings to recover stranded costs.

On November 23, 2004, the PSC entered an order granting in part and denying in part DECo's request for relief.⁶ The PSC took the following action:

- (1) It accepted its Staff's recommended base rate of \$7,123,560,000 for DECo;
- (2) It accepted DECo's estimate that DECo would experience 9,250 gigawatt hours (GWh) of customer choice sales⁷ in 2004, stating that it would true-up to the actual choice volume;
- (3) It adopted the administrative law judge's (ALJ) determination that DECo had \$43.616 million in stranded costs, and concluded that DECo should collect three mills per kWh from secondary customers and one mill per kWh from primary customers until the amount collected totaled \$43.616 million, or until any additional stranded costs incurred during 2004 were determined; and
- (4) It observed that because rate caps would remain in effect until January 1, 2006, a true-up of DECo's PSCR costs and production fixed cost (PFC) stranded costs calculations would be necessary.

⁴ A "general rate case" is "a proceeding initiated by a utility in an application filed with the commission that alleges a revenue deficiency and requests an increase in the schedule of rates or charges based on the utility's total cost of providing service." MCL 460.6a(2)(b).

⁵ A PSCR clause is "a clause in the electric rate or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices." MCL 460.6j(1)(a).

⁶ On December 18, 2003, and February 20, 2004, the PSC entered interim orders in Case No. U-13808 requiring DECo to reinstate its PSCR clause as of January 1, 2004, and granting DECo interim rate relief in the amount of \$248,430,000, respectively.

⁷ A "customer choice" sale is one in which a DECo customer purchases electric power from an alternative supplier, but receives delivery of the power over DECo's wires.

The PSC concluded:

At this time, the Commission finds that there are likely to be no stranded costs beyond those addressed in today's order. Consequently, the Commission also finds that there will likely no longer be any need to have annual proceedings to true-up stranded costs pursuant to Section 10a(16) of Act 141. Detroit Edison shall be free to file a true-up proceeding in the event it deems it appropriate to do so. If Detroit Edison experiences a significant increase in choice load subsequent to issuance of this order that results in the determination of further stranded costs, then the company may file a rate case to address any further rate relief needed.

The PSC directed DECo to "file its 2004 stranded cost case in conjunction with its PSCR reconciliation case to ensure a comprehensive evaluation of its stranded costs including equitable treatment of interconnection/third party revenues."⁸

C. The Instant Cases

This appeal arises from an order issued by the PSC resolving two cases filed by DECo, pursuant to the direction of the PSC, a power supply reconciliation case (Case No. U-13808-R) and a net stranded cost case (Case No. U-14474).

MCL 460.6j(12) deals with a power supply cost reconciliation proceeding, and provides in pertinent part:

Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. . . . At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

To the extent that a utility is found to have underrecovered its costs, the utility is entitled to recover those costs, with interest, from customers. If a utility is found to have overrecovered its costs, it is required to refund that revenue, with interest, to customers. MCL 460.6j(14)-(16).

⁸ In *In re Application of Detroit Edison Co*, 276 Mich App 216; 740 NW2d 685 (2007), this Court affirmed in part and reversed in part the PSC's order of November 23, 2004.

MCL 460.10a deals with alternative electric service, and provides in pertinent part:

(1) No later than January 1, 2002, the commission shall issue orders establishing the rates, terms and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.

* * *

(16) The commission shall, after a contested case proceeding, issue annually an order approving for each electric utility a true-up adjustment to reconcile any overcollections or undercollections of the preceding 12 months to ensure the recovery of all amounts of net stranded costs. The rates for customers remaining with an incumbent electric utility will not be affected by the true-up process under this subsection. The commission shall review the electric utility's stranded cost recovery charges and securitization charges implemented for the preceding 12 months, and adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs.

(17) The commission shall consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:

(a) Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.

(b) Evaluating net stranded costs based on the market price of power in relation to prices assumed by the commission in prior orders.

(c) Any other method the commission considers appropriate.

On March 31, 2005, DECo filed both an application for reconciliation of its PSCR revenues and expenses for the 12-month period ending December 31, 2004 (Case No. U-13808-R), and an application for reconciliation of its 2004 stranded costs (Case No. U-14474).

At an evidentiary hearing, DECo's witness stated that DECo filed its 2004 production fixed cost (PFC) net stranded costs case using the methodology approved by the PSC in Case No. U-12639, and asserted that DECo should not be criticized for doing so.⁹ The witness

⁹ In Case No. U-14474, the Staff proposed a methodology for calculating stranded costs that was different from the revenue requirements methodology adopted in Case No. U-12639. The Staff divided the year 2004 into three periods, consisting of (1) the pre-interim order period (January 1, 2004, to February 20, 2004), (2) the interim period (February 21, 2004, to November 23, 2004), and (3) the post-final order period (November 24, 2004, to December 31, 2004). The Staff recommended use of the previously-adopted revenue requirements calculation approach for
(continued...)

maintained that the rate relief granted to DECo in the interim order did not account for the higher volume of choice sales incurred in 2004, that DECo was unable to recover stranded costs from bundled customers because the rate freeze implemented by Act 141 was still in place, and that any change in methodology for calculating stranded costs should not be implemented until the rate freeze expired on December 31, 2005.

In an order entered on September 26, 2006, the PSC found that DECo's 2004 operating costs were reasonably and prudently incurred. The PSC stated:

Similarly, the Commission finds that the Staff is correct in its interpretation of page 106 of the final order [i.e., the order of November 23, 2004, in Case No. U-13808]. Detroit Edison has not (nor does it allege that it has) experienced a significant increase in choice load subsequent to the issuance of the final order that necessitates the determination of further stranded costs in a rate case. Detroit Edison has now recovered all stranded costs arising from the utility restructuring imposed by Act 141, and it is the Commission's expectation that the stranded cost process has not run its course.

With respect to Detroit Edison's 2004 net stranded costs, the Commission finds that the Staff's calculation method is just, reasonable, and in the public interest. MCL 460.10a(17)(c). The Staff's calculation for the pre-interim period is a true-up, which was clearly authorized by the final order. The Staff's method for the interim period relies upon the findings in the final order with regard to PFC and total revenue deficiency for 2004, and recalculates the proportion of stranded costs to the total final revenue deficiency in a way that was not possible at the time of the interim order. The Commission agrees with the ALJ that this is the most appropriate method presented for determining net 2004 stranded costs, and adopts the Staff's calculation of \$18,671,000. Exhibit S-2.

Detroit Edison doubled its third party sales revenues in 2004. The more aggressive marketing undertaken by the company resulted in \$127,022,770 in proceeds available for offsetting stranded costs and PSCR expenses. The Staff supports allowing the company to retain some of the third party sales revenues for 2004 because of the unique circumstances of that year. As an equitable measure, the Staff proposes that the company keep 20% of the third party sales revenues, partly in recognition of the company's reliance on certain signals from the Staff. The Staff chose the 80/20 split because it has been applied previously by the Commission. However, that split was applied prospectively as an incentive to engage in wheeling. No amount chosen in this case will act as an incentive, as sales have already been made.

(...continued)

the pre-interim period. The Staff stated that after the interim period began, stranded costs were eliminated because PFCs that were stranded when customers moved to alternative providers were reallocated to other DECo customers (referred to as bundled customers). The Staff reasoned that for the post-final order period, PFCs were no longer stranded because the order allowed DECo to recover all costs.

The Commission agrees with the ALJ, the Staff, the Attorney General, and other intervenors that O&M costs have already been included in base rates. These costs are meant to be addressed in a rate case. MCL 460.6, 460.6a. A PSCR proceeding is not the appropriate proceeding for recovery of O&M costs, whether variable or fixed. MCL 460.6j(1)(a). The Commission has found that production O&M expenses are variable costs. December 20, 2001 order in Case No. U-12639. Detroit Edison argues that, in light of this finding, the company should be allowed to retain 50% of third party sales revenues because that is “directionally closer to compensating the Company for its under-recovery of production O&M for 2004.” 2 Tr 145. This evidence does not persuade the Commission that the O&M expense actually associated with producing 100% of the third party sales revenues is equal to 50% of the third party sales revenues. Like other issues in this proceeding, production O&M costs were addressed in the final order, and the Commission is not persuaded that the higher level of third party sales requires modification of the findings in that order. *See*, November 23 order, pp. 54-55.

The Commission finds that the full amount of additional stranded costs should be offset by third party sales revenues, consistent with the Commission’s practice during the rate freeze period. *See, e.g.*, December 20, 2001 order in Case No. U-12639, p. 10; July 31, 2003 order in Case No. U-13350, p. 2. Prior to that time, third party sales revenues had been used to offset only PSCR expenses. For the unique year of 2004 in which both rate caps and the PSCR mechanism were operating, the Commission finds that the most equitable solution is to provide offsets for both choice and retail customers. The Commission sees value in the Staff’s proposal that the benefits of third party sales revenues be returned to the retail and choice classes on the basis of each class’s contribution to PFC. However, the Commission is concerned about the current state of the choice program and finds that it is appropriate in this final stranded cost proceeding to continue the practice of offsetting stranded costs with third party sales revenues. Thus, \$127,022,770 in third party sales revenues is reduced by \$18,671,000 in stranded costs, yielding \$108,351,770 to be used as a credit to ratepayers. This amount is approximately \$10 million greater than the amount reflected on Exhibit S-1, and results in approximately \$76 million in PSCR overrecovery. Exhibit A, attached hereto, is the Staff’s Exhibit S-1 Revised, which shows the recalculated interest on the PSCR overrecovery. The Commission finds that Detroit Edison overrecovered its PSCR expenses, including interest, by \$75,852,692 in 2004. The commission authorizes Detroit Edison to roll this amount over into its 2005 reconciliation. The Commission further authorizes Detroit Edison to defer the 2004 PEM reconciliation to 2005.

The PSC denied the Attorney General’s motion for rehearing of this order.

II. Standard of Review

The standard of review for PSC orders is narrow and well defined. All rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, *prima facie*, to be lawful and reasonable. MCL 462.25; *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party

aggrieved by an order of the PSC has the burden of proving by clear and convincing evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment. *In re MCI Telecom Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). An order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966).

A final order of the PSC must be authorized by law and be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney Gen v Public Service Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987).

We give due deference to the PSC's administrative expertise, and as a general rule, we will not substitute our judgment for that of the PSC. *Attorney Gen v Public Service Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). We give respectful consideration to the PSC's construction of a statute that the PSC is empowered to execute, and will not overrule that construction absent cogent reasons. If the language of the statute is vague or obscure, the PSC's construction serves as an aid to determining the legislative intent, and will be given weight if it does not conflict with the language of the statute or the purpose of the Legislature. However, the construction given to a statute by the PSC is not binding on us. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90; 754 NW2d 259 (Docket Nos. 134493, 134500, decided July 23, 2008), slip op at 13-14. Whether the PSC exceeded the scope of its authority is a question of law that we review de novo. *In re Complaint of Pelland Against Ameritech Michigan*, 254 Mich App 675, 682; 658 NW2d 849 (2003).

III. Analysis

A. Net Stranded Costs

DECo first argues on appeal that the PSC violated the statutory mandate that it provide for full recovery of the net stranded costs incurred by a utility. DECo filed Case No. U-14474 seeking recovery of net stranded costs for 2004 in accordance with the revenue requirements approach adopted by the PSC in Case No. U-12639. However, in Case No. U-14474, the PSC used this approach for only the pre-interim period of January 1, 2004, to February 20, 2004. DECo asserts that the PSC's adoption of the Staff-recommended new methodology for calculating stranded costs denied DECo a full recovery of its net stranded costs. We disagree.

DECo's assertion that the PSC violated several statutory mandates by abandoning the revenue requirements method of calculating net stranded costs for the large portion of 2004 is without merit. The PSC's order in Case No. U-12639 met the requirement in MCL 460.10a(1) that a methodology for recovery of stranded costs be established "no later than January 1, 2002[.]" However, no statute expressly defines the term "stranded costs," and no language in MCL 460.10a(1) mandates that the PSC adopt only one method to be applied in all future cases. The PSC has broad latitude to determine stranded costs, MCL 460.10(a)(17), and we may give weight to any reasonable construction given to the term "stranded costs" by the PSC. *In re Complaint of Rovas, supra* at 13-14; see also *Consumers Energy Co v Public Service Comm*, 268 Mich App 171, 180-181; 707 NW2d 633 (2005). The PSC is not bound by any particular ratemaking methodology, and can make pragmatic adjustments in order to respond to any particular circumstances in any given case. *Attorney Gen v Public Service Comm*, 189 Mich App

138, 147; 472 NW2d 53 (1991). Moreover, the PSC's adoption of the calculation method used in the September 26, 2006, order does not constitute an unlawful retroactive alteration of a previous order¹⁰ or an improper rehearing of Case No. U-13808.¹¹

Furthermore, DECo's argument that the PSC's act of changing its method for calculating stranded costs violated the statutory mandates that the Commission must "provide for full recovery" and "ensure the recovery of all amounts of net stranded costs" incurred by a utility, MCL 460.10a(1) and MCL 460.10a(16), and resulted in a decision that was not supported by competent, material, and substantial evidence on the whole record because actual choice sales for 2004 totaled 9,840 GWh rather than 9,250 GWh, is without merit. DECo does not assert that it was not allowed to recover fully its stranded costs for the pre-interim period, i.e., January 1, 2004, to February 20, 2004. DECo's contention that it was precluded from recovering some stranded costs for both the interim period, February 21, 2004, to November 23, 2004, and the post-final order period, November 24, 2004, to December 31, 2004, is based on DECo's calculation of its total stranded costs, and its assertion that it was unable to collect stranded costs shifted to bundled customers because those customers' rates were capped in 2004. DECo's argument is not that the existence of rate caps resulted in these stranded costs. Furthermore, witnesses for the Attorney General and the PSC Staff indicated that DECo was recovering stranded costs from choice customers. The PSC was entitled to rely on this evidence, notwithstanding the existence of contradictory evidence. *Great Lakes Steel v Public Service Comm*, 130 Mich App 470, 481-482; 344 NW2d 321 (1983).

The PSC's decision to offset DECo's stranded costs with choice sales rather than allocating choice sales revenues between DECo's bundled retail customers and choice customers was within DECo's broad ratemaking discretion. *Attorney Gen v Public Service Comm*, 231 Mich App 76, 79; 585 NW2d 310 (1998). The PSC was entitled to take into consideration the legislative goal of fostering competition among providers when making this decision. *Id.*

The PSC did not fail to follow a statutory mandate in establishing a method for calculating DECo's net stranded costs for 2004, and did not abuse its discretion in the exercise of its judgment regarding the offsetting of DECo's stranded costs with choice sales. The PSC's order is not unlawful. *In re MCI Telecom*, *supra* at 427. Furthermore, the order is supported by the requisite evidence, and thus is not unreasonable. *Associated Truck Lines*, *supra* at 279. DECo disagrees with the PSC's calculation and allocation of stranded costs, but has not shown by clear and convincing evidence that it is entitled to relief. *In re Complaint of Rovas*, *supra* at 13-14.

B. O & M Expenses

¹⁰ The PSC has no authority to retroactively alter a prior decision. See *Detroit Edison Co v Public Service Comm*, 264 Mich App 462, 467; 691 NW2d 61 (2004).

¹¹ The PSC's rules require that a petition for rehearing be filed within 30 days of a Commission decision. See MAC R 460.17401(2); R 460.17403(1).

Second, DECo notes that prior to the enactment of Act 141, if it sold electricity at wholesale prices to third parties, the proceeds of those sales were used to reduce the costs incurred by DECo in providing electricity to its retail customers. Act 141 froze rates and suspended DECo's PSCR clause, and allowed customers to purchase power from other suppliers. During the freeze period, the proceeds of DECo's wholesale sales of electricity to third parties were used to reduce DECo's stranded costs.

DECo emphasizes that it acted according to the PSC's direction, and made wholesale sales of electricity to third parties using the generation capacity freed up when customers chose to purchase electricity from other suppliers, and that it had O & M expenses associated with the generation of power sold on a wholesale basis. However, when choice customers stopped paying generation-related based rates, through which O & M costs are normally recovered, DECo's collection of O & M expenses was reduced. DECo argues that the PSC erred by denying DECo any recovery of these O & M expenses. We disagree.

DECo sought to retain a portion of the revenue from third party wholesale sales, notwithstanding its admission that such revenues historically have been returned to customers. The PSC declined to factor in the variable O & M expenses in its calculation of DECo's stranded costs, concluding that the base rates established in Case No. U-13808 (a rate case) adequately accounted for O & M expenses. The PSC observed that O & M expenses are more appropriately addressed in a rate case. MCL 460.6; MCL 460.6a. DECo has not established that cogent reasons exist for this Court to overrule the PSC's application of the statutory scheme that it is authorized to administer. *In re Complaint of Rovas, supra* at 13-14. DECo disagrees with the PSC's conclusion, but fails to demonstrate that the PSC violated a statutory mandate or abused its discretion in making the decision. *In re Telecom, supra* at 427.

IV. Conclusion

The PSC's decisions regarding the calculation of stranded costs and recovery of O & M expenses are not unlawful or unreasonable, and are supported by the requisite evidence.

We affirm.

/s/ Kurtis T. Wilder
/s/ Jane E. Markey
/s/ Michael J. Talbot